

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NOVELIS CORPORATION,)	
)	
Petitioner/Cross-Respondent)	
)	
and)	
)	
JOHN TESORIERO, MICHAEL MALONE,)	
RICHARD FARRANDS, ANDREW DUSCHEN,)	
)	
Intervenors,)	Nos. 16-3076
)	16-3570
NATIONAL LABOR RELATIONS BOARD,)	
)	
Respondent/Cross-Petitioner)	
)	
and)	
)	
UNITED STEEL, PAPER AND FORESTRY,)	
RUBBER, MANUFACTURING, ENERGY, ALLIED)	
INDUSTRIAL & SERVICE WORKERS)	
INTERNATIONAL UNION, AFL-CIO, CLC,)	
)	
Intervenor)	

EMPLOYEE INTERVENORS' OPPOSITION
TO THE MOTION OF THE NATIONAL LABOR
RELATIONS BOARD FOR SEVERANCE
AND PARTIAL REMAND

Intervenors John Tesoriero, Michael Malone, Richard Farrands, and Andrew Duschen (“Intervenors”) file this response in opposition to the Motion of the National Labor Relations Board for Severance and Partial Remand, filed with the Court on February 9, 2018 (Dkt. # 222).

The Board has requested that the Court sever and remand two §8(a)(1) determinations the NLRB previously made with respect to Novelis’ social media workplace rule and email use rule because the prior justification for those determinations has been overturned by the Board’s recent decision in *The Boeing Company*, 365 NLRB No. 154 (2017).

While Intervenors recognize the Court’s authority to sever and remand the two predicate issues solely to permit the Board, in the first instance, to apply the new legal standard to Novelis’ workplace rules, Intervenors oppose the motion because of the potential for further delay in addressing the critical representational issue. These workplace rules have not been in effect since the issuance of the §10(j) injunction in September 2014. With due respect to the Board’s primacy and “expertise” in interpreting the NLRA, the prior determinations on these two rules, while relevant, material and cumulative, should not be permitted to deter this Court from reversing the Board’s unsustainable, “extraordinary remedy” of a bargaining order that would

impose union representation upon the Intervenors and their fellow employees by government decree.

On this date, the 4th anniversary of the NLRB election, in which a majority of Novelis employees voted against the union, Intervenors urge this Court to deny the motion and issue a decision rejecting the bargaining order for all of the reasons previously stated on the record.

Respectfully submitted,

s/Thomas G. Eron

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Dated at Syracuse, NY
this 20th day of February, 2018